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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/056,019 04/07/98 TUOMANEN

E 1340-1-017

EXAMINER

HM12/0818

ALLEN, M

DAVID A JACKSON  
KLAUBER & JACKSON  
411 HACKENSACK AVENUE  
HACKENSACK NJ 07601

ART UNIT

PAPER NUMBER

1645

10

DATE MAILED:

08/18/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
**09/056,019**

Applicant(s)  
**Tuomanen et al.**

Examiner  
**Marianne P. Allen**

Group Art Unit  
**1645**



☐ Responsive to communication(s) filed on \_\_\_\_\_

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-45 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☐ Claim(s) \_\_\_\_\_ is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☒ Claims 1-45 are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Application/Control Number: 09/056,019

Art Unit: 1645

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-18 and 39, drawn to polypeptides, classified in class 530, subclass 350.
- II. Claims 19-35, drawn to nucleic acids, classified in class 536, subclass 23.5.
- III. Claims 36-38, drawn to antibodies, classified in class 530, subclass 387.1.
- IV. Claims 40-41 and 45, drawn to nucleic acid vaccines and methods of vaccination, classified in at least class 514, subclass 44, for example.
- V. Claims 42-43, drawn to methods of treatment using polypeptides, classified in class 514, subclass 12.
- VI. Claims 44, drawn to methods of treatment using antibodies, classified in at least class 424, subclass 130.1, for example.

The inventions are distinct, each from the other because:

The products of Groups I-III can be shown to be distinct, each from the other, because they differ substantially in structure and function and can be used in multiple methods. The polynucleotides can be used to produce the protein as well as in methods of diagnosis. The polypeptides can be used in methods of treatment as well as to produce antibodies. The antibodies can be used in methods of diagnosis as well as in methods of purification. The methods of Groups IV-VI can be shown to be distinct, each from the other, because they differ in starting materials, method steps, and/or goals. Each product can be shown to be distinct from each method because they can be used in multiple methods as set forth above.

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Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and the necessity for non-coextensive literature searches, restriction for examination purposes as indicated is proper.

A telephone call was made to Mr. David Jackson on 7/20/99 to request an oral election to the above restriction requirement, but did not result in an election being made.

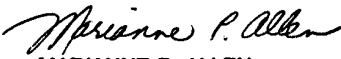
Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(h).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marianne P. Allen, whose telephone number is (703) 308-0666. The examiner can normally be reached on Monday-Friday from 9:00 am to 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Caputa, Ph.D., can be reached on (703) 308-3995. Official FAX communications may be directed to either (703) 308-4242 or (703) 305-3014.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

  
MARIANNE P. ALLEN  
PRIMARY EXAMINER  
GROUP 1645  
AU 1645